

S.B.Civil Sales Tax Revision No.94/2000

C.T.O.Rajsamand

VS

M/s Sh.Ravi Marbles India Pvt..Ltd.

Date of Order: 7.9.2006.

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.

None present for the respondent.

Heard learned counsel for the petitioner. No body appears on behalf of the respondent.

Brief facts of the case are that for the assessment order for the year 1987-88 (from 1.4.1987 to 31.3.1988) under Section 9 of the CST Act, 1956 read with Section 10C of the RST Act, 1954, was passed on 5.11.1990 by the assessing authority imposing tax and consequential interest and penalty under various heads for different transactions. The said order was rectified under Section 9 of the CST Act read with Section 17 of the RST Act by order dated 26.12.1992. According to the revenue, while passing the assessment order dated 5.11.1990 (Annx.1), the assessing authority did not impose surcharge and consequential interest and, therefore, the assessing authority passed rectification order on 15.4.1994 rectifying the assessment order dated 5.11.1990 under Section 9 of the CST Act, 1956 read with Section 17 of the RST Act, 1954 and imposed the surcharge of Rs.5788/- and consequential

interest of Rs.9030/-, in total, the liability of the assessee became Rs.14,818/-.

Being aggrieved against the said order dated 15.4.1994 (Annx.3), the respondent-assessee preferred first appeal before the Deputy Commissioner(Appeals), Udaipur. The said appeal was allowed by the Deputy Commissioner(Appeals) merely on the ground that in view of the principle of promissory estoppel, the surcharge and interest thereon cannot be levied despite the fact that the legal position about levy of surcharge and interest was made clear by the decision of the High Court referred in the order of the appellate authority itself. The judgment of the first appellate court (Deputy Commissioner(Appeals)) was challenged by the revenue by preferring appeal before the Tax Board which was dismissed by the Tax Board vide order dated 17.7.1999. Hence this revision petition.

The learned counsel for the petitioner submitted that in identical facts and circumstances, where the principle of promissory estoppel was applied against the statutory provisions of law in relation to imposition of surcharge and penalty, this Court in S.B.Civil Sales Tax Revision Petition No.1042/99 decided on 8.12.2005 clearly held that the principle of promissory estoppel cannot be applied against the statute. However, this Court, after setting aside the order of the Tax Board and Deputy Commissioner(Appeals), remanded the matter back to the Tax Board for

deciding the matter afresh. The learned counsel for the petitioner submitted that the matter was remanded to the Tax Board by order dated 8.12.2005 by this Court in S.B.Civil Sales Tax Revision Petition No.1042/99 in peculiar facts and circumstances of the case which is apparent from the order dated 8.12.2005 itself, as the Hon'ble High Court observed that the Tax Board should again look into the matter in the light of the decision given in the case reported in 90 STC page 47.

It is submitted by the learned counsel for the petitioner that once the principle of promissory estoppel cannot be applied, effect of law can be given by this Court by setting aside two orders passed by the two appellate authorities. It is submitted that in view of the settled proposition of law that principle of promissory estoppel cannot be applied against the statutory provisions, this revision petition deserves to be allowed.

I considered the submissions of the learned counsel for the petitioner.

It is clear from the facts of the case mentioned above in detail that the assessing authority merely rectified the mistake and has given effect to the legal provisions and passed the consequential order of imposition of surcharge and interest and said order of the assessing authority was set aside by the Deputy Commissioner(Appeals) vide order dated 28.9.1995 merely on the ground that the surcharge and interest

cannot be levelled because of the reason that the assessing authority has passed the order on one occasion and, therefore, estopped from correcting the mistake. The mistake is apparent on the face of the order of the Deputy Commissioner(Appeals), Udaipur and from the order of the Tax Board dated 17.7.1999.

Hence this revision petition is allowed. The order passed by the Tax Board dated 17.7.1999 and order of the Deputy Commissioner (Appeals) dated 28.9.1995 are set aside. The order of the assessing authority dated 26.12.1992 is restored.

(PRAKASH TATIA),J.

mlt.